

APPEAL FROM ORDER NO. 44 OF 2003

1. Shri Mulla Ahmed Muzawar,
2. Smt. Zeneth Bi,
3. Shri Mullam Rashid Muzawar,
4. Smt. Aisha Bi,
5. Shri Mulla Abu Talib,
6. Smt. Musura Bi @ Razia Bi,
7. Shri Mulla Abdul Razak Muzawar,
8. Smt. Fatima Bi, and
9. Smt. Kulsum B.,
all r/o Cott, Ponda, Goa. ... Appellants.

Versus

1. Deputy Collector/Development
L.A.O., Panaji, Goa, and
2. Shri Abdul Bi, r/o Cott,
Ponda, Goa. ... Respondents.

Shri D. Pangam, advocate for the appellants.

Shri P.A. Kamat. Addl. Govt. Advocate for the
respondent State.

CORAM : F. I. REBELLO, J.

DATE : 25th July, 2003.

ORAL ORDER

This is an appeal against the Order dated 21st February, 2002, by the learned Additional District Judge, Panaji, refusing to set aside the Order dismissing the reference for non-prosecution by further holding that an application for restoration would not lie. It is not necessary to go into the various facts as, in my opinion, the matter would be covered by the judgment of the Apex

Court in **Khazan Singh (dead) by L.Rs. vs. Union of India, (2002) 2 SCC 242**. The Apex Court held on a consideration of the provisions of Sections 18 and 26 of the Land Acquisition Act, 1894, that the civil court has to pass an order in an Award under a reference under Section 18 of the Land Acquisition Act. If any party to whom notice has been served by the civil court did not participate in the inquiry it would only be at his risk because an award would be passed perhaps to the detriment of the party concerned. But non-participation of any party would not confer jurisdiction on the civil court to dismiss the reference for default. In that case the application under Order 9 Rule 9 of the C.P.C. for setting aside order of dismissal was rejected. The Apex Court held that there was power in the Court to set aside the order and considering the duty that is cast on the court to answer the reference and as the High Court erred in affirming the order of Additional District Judge dismissing the application under Order 9 Rule 9 of the C.P.C. for restoration of the reference allowed the appeal and remanded the matter to the District Court to answer the reference.

2. The present matter is squarely covered by the ratio of the judgment in the case of **Khazan Singh** (supra) before the Apex Court. Once a reference is made the acquiring court is bound to answer the reference by taking

on record the evidence of the parties present before it and to lead evidence.

In the light of that the Appeal From Order is allowed, the impugned Order dated 21st February, 2002 is set aside and the Order dated 9th April, 2002 dismissed the reference for non-prosecution is set aside. The reference is restored and the reference court to give opportunity to the appellants to lead evidence and thereafter proceed according to law.

F. I. REBELLO, J.

mc.